

SPECIAL CIVIL APPLICATION No 8462 of 1988

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No.814/89, SCA No.1579/89.

Hon'ble MR.JUSTICE S.M.SONI and

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No

HEIRS OF CHHITABHAI M PATEL
Versus
STATE OF GUJARAT

Heirs of Deceased Ambalal Damodar
vs.
State of Gujarat.

Shivabhai Lallubhai Patel

vs
State of Gujarat

Chandanben wd/o Ambalal Damodar

vs.
State of Gujarat

Ishwarbhai Keshavbhai

vs.
State of Gujarat

Appearance:

1. Special Civil Application No. 8462 of 1988
MR JITENDRA M PATEL for Petitioners
M/S PATEL ADVOCATES for Respondent No. 1
M/S PURNANAND & CO for Respondent No. 3
2. Special Civil Application No 8373 of 1988
and other matters.
Mr. J.M.Patel for Petitioners
M/S PATEL ADVOCATES for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE S.D.PANDIT
Date of decision: 09/12/96

ORAL JUDGEMENT(Per: Pandit.J)

All these five petitions are filed by the villagers of village Por in Vadodara Taluka District Vadodara to challenge the award passed by the respondent no.2 in respect of the acquisition of their land for the respondent no.3 who is the acquiring body. As the same common questions are involved in these five petitions,

all these petitioners are being disposed of by this common judgment.

The respondent no.3 approached the State Government for acquiring the lands of village Por of Taluka Vadodara for establishing Industrial units in order to have industrial development in the State. In view of the said request, respondent no.1 Government of Gujarat issued a Notification under section 4 of the Land Acquisition Act(hereinafter referred to as the said Act) on 20.2.84. It seems that thereafter the respondent no.3 was approached by the the present five petitioners and other villagers whose lands were also covered by the Notification under section 4 of the Act and had entered into an agreement to purchase their lands at the rate of Rs. 18,000/- per acre. Present petitioners had also executed such an agreement in favour of respondent no.3 but it seems that thereafter the petitioners had issued a letter on 16.3.85 to the respondent no.2 contending therein that said agreement was obtained from them on account of their illiteracy and that they were coming from agriculture family and by making false representations and fraud. After receipt of the said complain by the respondent no.2 it seems that a Notification under section 6 of the Act was issued on 30.1.87 and in pursuance of the said Notification a further notice was issued on 8.6.87. Present petitioners had filed their objections to the said acquisition and had contended in the said objections also that the agreement was obtained by the respondent no.3 on 24.1.85 was not a valid and binding agreement against them. Thereafter, present respondent no.2 proceeded to pass an award and he passed his award on 8.3.88.

3. Thereafter the petitioner filed an application under section 18 of the Act within the stipulated period. Said application was for making reference to the District Court for fixing adequate compensation of the lands acquired from them . That application has been rejected by the respondent no.2 by holding that in view of the provisions of section 11(2) of the Act as there was valid agreement between the petitioners and respondent no.3,a reference u/s 18 could not be made. Hence the petitioners have come before this court.

4. There is no dispute of the fact that present petitioners had entered into an agreement with respondent no.3 on 24.1.85. It is also an admitted fact that after the said agreement, present petitioners had informed in

writing to the respondent no.2 on 16.3.85 that the agreement dated 24.1.85 was obtained from the by practicing fraud and on account of misrepresentation and threats. Now in view of these admitted facts provisions of section 11(2) will have to be considered while considering the contentions raised before us. Said section 11(2) of the Act runs as under:

"11(2) Notwithstanding anything contained in sub-section(1) , if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement. "

If the provisions are considered then, it would be quite clear that in order to pass an award on the strength of the agreement between the parties the persons interested in the land and the person for whom the land is acquired, there must be valid and legal agreement between the parties. He must record his satisfaction for coming to that conclusion. When that is expected by the law it would be incumbent upon the Land Acquisition Officer or Collector who has to pass an award in terms of the agreement to give reasons as to on what basis he has satisfied himself to hold that the agreement between the parties was a valid and legal. In the particular case before us when the person interested in the land have informed the Land Acquisition Officer that the agreement which has been obtained from the respondent no.3 was obtained from them by way of misrepresentation threats and fraud, it was incumbent on him to give sufficient opportunity to the petitioners to produce material before him to prove the said allegations and then to record his own finding on the said claim made by the petitioners. If the award passed in this case is considered, then it would be quite clear that, the respondent no.2 has not at all considered this position of law and he has not recorded any reasoning for negating the claim made by the petitioner in the petition on 16.3.85 and for coming to a conclusion that he was satisfied that there was a valid and legal agreement between the parties and respondent no.3. When the respondent Collector has not given any reason for rejecting the claim made by the petitioner in the application dated 16.3.85 and for coming to a conclusion that he was satisfied that there was a valid and legal agreement between the parties, the

award passed by him under section 11(ii) becomes invalid and illegal and therefore, the same deserves to be set aside as regards the present petitioners because there are several persons besides the present petitioners who are also governed by the said award.

5. The L.A. for the petitioner in SCA No. 8462/88 has vehemently urged before us that the question which the petitioners have raised disputing the agreement between the petitioners and respondent no.3 should be referred to the District Court. According to him, it is for the District Court to decide the questions raised by the petitioners in their application dated 16.3.85 and the Collector would not be the proper authority to decide the claim of them. He further submitted before us that after the award passed by the Collector, an offer was made by the Government and therefore, in the award there could not be a decision to the claim made by the petitioner but we are unable to accept the said submission made by him in view of the specific provision of section 11(2) quoted above. The law itself made it clear that it is for the Collector himself to satisfy as to whether there was a valid and legal agreement including the person interested in the land and the acquiring body. Therefore, when the Legislature itself makes it quite in sub section (2) of section 11 that it is the duty of the Collector to satisfy himself about the existence of valid and legal agreement between the persons interested in the land and acquiring body, it is not open for us to hold that said question will have to be decided by the District Court in a reference under section 18. The Division Bench of this Court in the case of Dinesh Soni & ors. vs ONGC & anor. reported in 1994(II) GLH 131 has elaborately considered various aspect of the passing of the award as well as provisions of section 11 as a whole and after considering the earlier decisions of this court as well as the Apex Court has laid down the following principles in para 34 on page 148 which run as under:

"From the aforesaid resume of weighty observations made by the learned Law-Lords and from the scheme of the Act and ultimate objectives sought to be achieved, following logical and legal summations of reasoning can be made.

- (a) Collector or Land Acquisition Officer acting u/sec. 11 of the Act is required to make inquiry and to make decision as regards the contents of the award which he proposes to make.

He is required to take decision about the true area of the land, the compensation apportionment of the compensation among all the persons interested in the land. Question is: "What is the nature of this decision and what is the nature of power exercised."

- (b) Consistently from the case of *Ezra vs. Secretary of State* (supra) till approval thereof by the Supreme Court in the case of *Raja Harischandra* (Supra) it is now well accepted that the proceedings of the Collector resulting in the "award" are administrative and not judicial. The award made after inquiry is the "decision" of the Government binding only on Government. Throughout the proceedings the Collector acts as agent of the Government for the purpose of acquisition. He is in no sense of the term, a judicial officer nor is the proceeding before him a judicial proceeding. He is not a court.
- (c) Legally and logically therefore, immediately the question arises as to whether such decision of the Collector, acting as agent of Government and which is administrative in nature binding on all persons interested in the land as well as on the Government. Answer to the question is obvious. The Government at whose instance the land is being acquired is not entitled to demand a reference. The reason of this is plain. The Collector acts as the agent of the Government and the Government is accordingly bound by the award of its agent. On the other hand the person interested in the land are not bound by the findings reached by the Collector more particularly about the value of the land or the compensation to be awarded. The owners of the land or person interested in the land are not bound to accept the amount offered or tendered as compensation by the Collector. The award of the Collector is therefore, regarded as merely an offer. It is the offer made by an agent of the Government. The owner or person interested in the land has two options-(a) to accept the offer as such which in law would result into concluded contract. The Government shall be liable to pay the amount offered and on payment of the amount and delivery of possession of the land, the land acquisition proceedings are concluded, (b) to reject the offer and if judicial ascertainment is desired by the owner,

he can obtain it by making an application for reference to the court under Section 18 of the Act.

- (d) The Legislature of the State by enacting sub secs. (2) to (4) of Section 11 took a step in the right direction. If compensation to be paid for acquisition of land/property is nothing but just equivalent of market value of the property and if the persons interested whose lands are sought to be acquired and the acquiring body for whose benefit the acquisition is to come by mutual free agreement agree to market price to be paid as compensation, ordinarily, no objection can be taken. The Collector while making his decision about the compensation to be awarded after due inquiry is expected to arrive at the amount of just equivalent of marketable price if both the parties to the agreement agree to the amount of compensation and if agreement is not void or voidable being vitiated on the ground of fraud, coercion, undue influence or misrepresentation, there never was and there could not be any objection to relying on such agreement. As pointed out hereinabove, the Collector, even under the law could have, after due enquiry in his own independent decision acted on an agreement between the parties while making an award. Under the unamended law he was bound to act on such agreement. The Legislature has now by enacting sub-secs. (2) to (4) of Section 11 provided that it will be open to the Collector if he is satisfied that all the persons interested in the land who have appeared before him and have agreed in writing in a prescribed form matters to be concluded in the award he may make an award in terms of agreement without making further enquiry. It is required to be noted that the Legislature has used the words "he may" and not "he shall". Sub-sec.(2) of Section 11 is thus an enabling provision which enables the Collector to act on duly executed agreement between the parties, if he is otherwise satisfied about the genuineness of the agreement, its voluntary nature and about the fact that such agreement is not vitiated by duress, coercion, fraud, undue influence or misrepresentation.

- (e) After the award is made in terms of agreement duly executed between the

parties in writing it is in the nature of a consent award. Both the parties agree to the contents of the award and they call upon the authority to pass award in terms of agreement. This, is more or less, a consent decree to which seal of the Collector is super-added. The Collector as a deciding authority puts his seal over the agreement if he is satisfied that the parties appearing before him have agreed in writing on matters to be included in the award. Such an award undoubtedly retains the character of administrative decision which is reached at the instance of two parties who agreed to the terms and conditions and contents of the award. Is it thereafter open to any party to refuse to accept such award or to make a demand for judicial reference for ascertainment of true market value of the parcel of land? In our opinion the scheme of section 11(2) to (4) and the purpose and objective with which the said provisions came to be introduced do not leave any scope for permitting all persons interested in the land to apply for reference to the Collector under Section 18. The reason is obvious. The award declared by the Collector is not solely his decision. In fact, it is the decision reached by the parties by their mutual agreement. The Collector has simply super added his seal to such an agreement. Such consent award therefore, cannot be subjected to process of reference so as to permit the persons interested in the land to back out from the agreement they have already entered into and to claim higher amount of compensation. Such was not and could not be the intention of the Legislature. The Legislature in fact intended to encourage parties to arrive at amount of compensation by duly executed agreement so that the process acquisition of property is expedited and market value of the property is tendered to the owners thereof without any unreasonable delay. A very long period used to lapse in making award, in applying for reference,

in deciding the reference by the District Court and ultimately in disposal of appeals therefrom by the High Court or Supreme Court. Very often because of stay granted by the courts, for decades proceedings of land acquisition would keep pending and very object of acquisition would get frustrated. With a view to avoid such delays and with a view to seeking that price fixed by the willing purchaser and willing seller would be market price or nearer to market price the Legislature has introduced these provisions do that award on consent is passed. Once consent award is passed under section 11(2) of the Act based on the agreement duly executed between the parties in our opinion there is no further scope of application under section 18. Excepting those cases where agreement is vitiated being void or voidable on the general grounds which are available under the Law of Contract, we do not see any case where a party to consent award can be permitted to back out therefrom so as to claim further price than the one which he has agreed with open eyes.

- (f) There is in the scheme of the Act itself answer to the question. If reference is made to section 18 of the Act it becomes clear that any person interested who has not accepted the award may by written application to the Collector requiring him to make reference to the determination of the court. The party applying for reference therefore must be one who has not accepted the award. The party who has executed the agreement in writing containing the contents of the award and a party who has accepted the payment of compensation without protest and has even delivered the possession of his property in token of his acceptance thereof, cannot be permitted to unilaterally rescind the contract to claim the benefit of judicial ascertainment of compensation by applying for reference. It may be noted that the acquiring body or the Government has

agreed to payment of compensation and in fact has paid the compensation as determined by consent award as there was agreement between the parties. In fact, in case where amount of compensation under the award is accepted without protest the Supreme Court in the case of Ashwanikumar Dhingra v. State of Punjab reported in AIR 1992 SC 974 made the following pertinent observation.

"It is clear from the provision of sec.18 of the Land Acquisition Act that the person interested in order to enable him to seek the remedy of reference can do so only if he does not accept the award. In order to show that the person concerned had not accepted the award the claimants accept the compensation only under protest because once the compensation awarded is accepted without protest the person concerned may lose his right to a reference for various matter mentioned in sec. 18 of the Land Acquisition Act."

If the above principles laid down by the earlier Division Bench of this Court are considered, then it would be quite clear that they have also taken the view that the decision regarding the validity or otherwise of the agreement between the person interested in the land and the acquiring body, will have to be decided by the Collector u/s 11(2) . We are in full agreement with the said view and we do not find any reason to take a different view .

6. L.A. for the petitioner has cited before us the case of Patel Vashram Gopalbhai & ors. vs. State of Gujarat & anor. 30 G. L.R. 128. But if the facts of the said case are considered then it would be quite that in that case there was no consideration of section 11(2) of the Land Acquisition Act and therefore, said case is not at all applicable to the case before us. Thus we hold that in view of the peculiar facts and circumstances of the case viz. that the Land Acquisition Officer respondent no.2 has not given his decision regarding objections filed by the present petitioners in their application dated 16.3.85 and their objections under section 9 and therefore, the award passed by the Collector will have to be set aside and the matter will have to be remanded to the respondent no.2. We are

supported in this view of us by the decision of another Division Bench of this court in SCA No. 5572/85 with SCA No. 5573/85 decided on 26.12.85 wherein the following observations are made:

" In these circumstances the only proper order which can be passed in these proceedings is that the land acquisition officer while deciding the question whether award should be declared on merits will also consider the contention of the acquiring body viz. the petitioner- whether there was any binding agreement between the parties and whether the award is to be declared under section 11(2) of the Act pursuant to the alleged agreement. If the Collector is satisfied that there was any such agreement, then only the question of passing award under section 11(2) would arise, otherwise, he will have to decide the matter purely on merits and declare the award in accordance with law under section 11(1) of the Act...."

7. Thus we hold that all these five petitions will have to be allowed. The award passed by the respondent no.2 in respect of the lands of all these five petitions is set aside and the matter is remanded to the respondent no.2 to decide the question as to whether there was valid and binding agreement between the petitioners and respondent no.3 so as to pass an award u/s. 11(2). In view of the fact that the matter is pending for more than 12 years we would direct the petitioners to appear before the Land Acquisition Officer on 18.2.97. The respondent no.2 should give opportunity to the petitioners to lead evidence in support of their claim made in their application dated 16.3.85 as well as in their objections filed in pursuance to the notice u/s.9 as well as to the respondent no.3 to meet with the said claim of the petitioners and then to decide the same according to law as to whether there was any valid agreement between the petitioners and respondent no.3 as regards the price if the land acquired for the respondent no.3 and then to pass necessary award either u/s 11(1) or u/s 11(2) as the case may be. He should pass the said award within six months from the date of appearance of the petitioners and respondent no.3. The petitioners are accordingly allowed. Rule is made absolute with no order as to costs.

(S.M.Soni.J)

(S.D.Pandit.J)

